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IN THE

**Supreme Court of the United States**

OCTOBER TERM—1943

No. 278.

COMPANIA TRASATLANTICA (formerly Compania  
Trasatlantica Administrada por el Estado),  
*Petitioner,*  
*against*

S.S. MANUEL ARNUS, her engines, etc. UNITED  
STATES OF AMERICA, claimant appearing specially  
and TODD-GALVESTON DRY DOCKS, INC.,  
*Respondents.*

**PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS FOR  
THE FIFTH CIRCUIT, AND BRIEF IN SUPPORT  
THEREOF**

GEO. WHITEFIELD BETTS, JR.,  
*Counsel for Petitioner.*

WILLIAM LOGAN, JR.,  
HELEN F. TUOHY,  
*Of Counsel.*



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*Petitioner,*

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S.S. MANUEL ARNUS, her engines, etc. UNITED  
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*Respondents.*

---

**PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

*To the Honorable the Chief Justice and the Associate,  
Justices of the Supreme Court of the United States:*

Petitioner herein prays for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit to review a judgment of that Court, entered March 28th, 1944, affirming a final decree in admiralty of the United States District Court for the Southern District of Texas, Galveston Division, in favor of respondents.

## Jurisdiction

The date of the judgment of the Circuit Court is March 28th, 1944. On June 23rd, 1944, Hon. ROBERT H. JACKSON signed an order extending the time for filing this petition to July 28, 1944. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13th, 1925 (28 U. S. C. A. 347a) and under General Rule 38 of this Court, Section 5, subdivision b.

## Statement

Compania Trasatlantica, a Spanish corporation, was the owner of and in possession of the S.S. *Manuel Arnus* for many years. On March 27th, 1938, the vessel was illegally seized by force and ruse by naval officers of the Mexican Government while the vessel was anchored in the bay at Havana, Cuba, and taken to Mexico without the consent or approval of the owner and contrary to its express protest (p. 43). It was seized by these naval officers also in violation of judgments of seizure of the Cuban courts against the *Manuel Arnus*, for supplies furnished by certain ship chandlers, and taken from Cuba without Customs House clearance (pp. 42, 43). On September 23rd, 1939, ownership of the vessel was vested in Compania Trasatlantica Administrada por el Estado (a company administered by the Spanish State) by decree of the Spanish Government under its requisition law (p. 110).

While the Mexican Government was still in possession of the vessel on March 20th, 1941, the Director General of Mexican Marine of the Mexican Government issued a purported declaration of abandonment (pp. 46, 47). On October 17th, 1941, after extended negotiations petitioner and



the Mexican Government entered into an agreement for the return of the *Manuel Arnus* to petitioner upon payment of certain port charges, etc. (pp. 49, 60). The Mexican Government endeavored to modify this agreement, but petitioner refused to permit it to be modified. While discussions were still in progress between petitioner and the Mexican Government, on November 24th, 1942, the vessel was towed from Vera Cruz, Mexico, to Galveston, Texas. Apparently, the Mexican Government had the vessel towed to Galveston as Hon. Sumner Wells in his letter of March 2nd, 1943, to the Spanish Ambassador agreed to reimburse the Mexican Government for salvage of the vessel and its transfer to the United States (p. 19).

On July 30th, 1942, the Supreme Court of Mexico reversed a decision in favor of seventy members of the crew for wages up to April 15th, 1939. It recognized *Compania Trasatlantica, S. A.*, as the owner of the vessel.

On February 4th and 11th, 1943, the United States Government was advised that petitioner was the owner of the vessel and that the vessel had been taken by the Government of Mexico from petitioner unlawfully (pp. 106-109). Notwithstanding this, on March 3rd, 1943, the United States Government accepted from the Mexican Ambassador to the United States what purported to be a bill of sale of the vessel, reciting that title in the United States was to be effective as of September 24th, 1942, which was a condition imposed by the United States (pp. 19, 23).

On the evening of March 11th, 1943, after the libel was filed the United States Government requisitioned all title and possession of the vessel, other than the rights and interests already acquired by it and purporting to be effective as of March 5th, 1943, under the Idle Vessels Act, Public Law 101 of June 6th, 1941 (Title 46, U. S. C. A. note

preceding § 1101) (p. 10). Petitioner contended below that this requisition was void and counsel for the United States stated that it did not assert or rely upon any rights acquired thereunder. On November 20th, 1943, the administration of the *Compania Trasatlantica* by the Spanish State terminated. Petitioner is informed that at the time of making this application, the S.S. *Manuel Arnus* is lying idle at Galveston, Texas, within the territorial jurisdiction of the District Court; and that efforts to repair her have been practically abandoned.

Petitioner never abandoned ownership of the vessel at any time and continuously asserted its legal right thereto.

### **Proceedings and Decisions of the Lower Courts**

On March 11th, 1943, petitioner filed a libel *in personam* and *in rem* to recover possession of the S.S. *Manuel Arnus* from the respondent Todd-Galveston Dry Docks, Inc., hereinafter referred to as "Todd." The United States of America appeared specially on April 5th, 1943, and filed a petition to dismiss the libel summarily, alleging that it was the owner and entitled to possession of the steamship and attached certain documents thereto. Petitioner filed an answer to this petition, denying ownership and possession of the United States. Upon the request of the Government petitioner consented to have the matter summarily decided, on condition that the United States would admit the truth of the facts submitted by the petitioner without legal evidentiary proof thereof, and requested that the petition be dismissed on the facts and the law (p. 59). On April 15th, 1943, the District Court rendered its summary decision dismissing the libel for lack of jurisdiction and a decree was entered on April 26th, 1943 (*Manuel Arnus*, 51 F. Supp. 577).

Thereafter, respondent Todd on May 15th, 1943, filed its answer and moved that the libel be dismissed as to it. An order granting respondent Todd's motion was duly filed on June 14th, 1943. On July 1st, 1943, an order was entered in the District Court allowing an appeal. Petitioner filed a bond for costs as required in the order, but no supercedeas bond was filed, the Court declining to stay the execution of the final decree for a sufficient length of time for the petitioner to communicate with Spain and to arrange for the necessary indemnity for a supersedeas bond. Communication with Spain at that time was subject to great delays.

The District Court's findings of fact and conclusions of law are printed at pages 118-120 of the record and reported at 1943 A. M. C. 808 (51 F. Supp. 577). There was no opinion in addition to the findings of fact and conclusions of law as prepared by the Trial Judge under Admiralty Rule 46½. The District Court found as a fact that the United States of America began negotiations with the Republic of Mexico for the purchase of the steamship on September 24th, 1942, and that pursuant to such negotiations the steamship was brought to the docks of Todd at Galveston, Texas, and also found as a fact that on March 3rd, 1943, the steamship was purchased by the United States from the Republic of Mexico and a bill of sale executed transferring title to the United States of America as of September 24th, 1942. Under its conclusions of law the District Court held that at the time of the filing of the libel herein on March 11th, 1943, the United States was in possession of the steamship and claiming title thereto and that at that time the vessel was at the docks of Todd at Galveston, Texas, and under such circumstances the vessel was not amenable to process of this Court, citing *United States v. Jardine*, 81 F. (2d) 746, *The Western*

*Maid*, 257 U. S. 419, and 46 U. S. C. A. Section 741, *et seq.* The District Court also concluded as a matter of law that if the facts were as set forth by petitioner the Court might not inquire into and determine the validity of the proceedings under which it was claimed by the United States of America that the Republic of Mexico acquired title to the steamship, citing *Underhill v. Hernandez*, 168 U. S. 250 and similar cases.

The opinion of the Circuit Court of Appeals is printed at pages 134-137 of the record and is reported at 141 F. (2d) 585 under the title of *Manuel Arnus*.

Upon the argument of the appeal respondent United States of America moved to dismiss the appeal on the ground that the case was moot because of the release of the *Manuel Arnus* in the Court below and there was no subject matter upon which the judgment of the Circuit Court could operate, that neither the Court below nor the Circuit Court had such jurisdiction *in rem* as would support a decree awarding possession of the vessel and that the appeal could not proceed against Todd which had only a status as bailee which ended upon release of the vessel.

The Circuit Court ruled that petitioner could not claim that the *in rem* jurisdiction persisted after the surrender of the vessel. It also held that the claim for damages against Todd *in personam* was merely a formal claim and incidental to the claim of possession. It held that the vessel was in the possession of the United States of America under a claim of ownership, that custody thereof had been delivered to Todd for a limited, temporary and special purpose and under such circumstances as did not, in law, divest the possession of the United States and that the custody of Todd no longer existed. It found that the possession of the vessel was in the United States and therefore

the issue of right of possession as between the petitioner and Todd presented nothing of substance for determination. It also found that the custody of Todd was the possession of the United States and that this ship being in the public service of the United States was immune from seizure and therefore dismissed the appeal *in rem* and affirmed the judgment of dismissal against Todd.

### Statute Involved

The statute involved is the Suits in Admiralty Act, 46 U. S. C. A., Section 741, *et seq.*, the pertinent provision of the Act being as follows:

“Exemption of United States vessels and cargoes from arrest or seizure.

No vessel owned by the United States \* \* \* or in the possession of the United States \* \* \* shall \* \* \* be subject to arrest or seizure \* \* \*.”

### Questions Presented

1. Where a supersedeas bond is not filed following dismissal of a libel *in rem* and the U. S. Marshal subsequently releases custody of the vessel do the District Court and the Circuit Court of Appeals lose jurisdiction where the vessel is not removed from the territorial jurisdiction of the Courts?

2. Where a vessel owned by a Spanish corporation is unlawfully and illegally seized by the Mexican Government in waters extra-territorial to Mexico and the United States of America and taken to Mexico and while there a decree of Spain vests title in *Compania Trasatlantica Administrada por el Estado*, a company administered by the Span-

ish State, and where subsequently the vessel, while her owner is excluded therefrom by the Mexican Government, is declared abandoned by the Mexican Government and sold by it to the United States of America and brought into the territorial waters of the United States of America without the authority or consent of its owner and a possessory libel *in personam* and *in rem* is filed by Compania Trasatlantica Administrada por el Estado against Todd-Galveston Dry Docks Inc. and the vessel, and the United States appearing specially files a petition to dismiss the libel merely alleging title and right to possession, which allegations are denied by libellant, can the lower courts summarily refuse jurisdiction on the principle of sovereign immunity of the United States?

3. Does the principle of sovereign immunity apply where the proof is insufficient to establish that the United States is the legal owner or in possession of a vessel?

4. Is the mere claim of the United States of ownership or right to possession of a vessel sufficient under the principle of sovereign immunity to justify a refusal of jurisdiction?

5. Is the mere claim of the United States of ownership or right to possession of a vessel sufficient under 46 U. S. C. A., Section 741, to justify refusal of jurisdiction?

6. May a Federal Court summarily dismiss a possessory libel for lack of jurisdiction under 46 U. S. C. A., Section 741, where the proof is insufficient to establish that the United States is the legal owner or in possession of the vessel?

7. Where a libel is filed *in rem* for possession and *in personam* for damages does the Court lose jurisdiction

of the libel *in personam* upon the dismissal of the libel *in rem*?

8. Where a possessory libel is brought against the bailee is the Government of the United States as bailor entitled to a dismissal of the libel on the principle of sovereign immunity where the bailment agreement is not before the Court?

9. Where the facts show that a bailee is in actual possession of a vessel and do not show the agreement between the bailee and bailor can a Court conclude as a matter of law that the bailor was in possession?

10. Where a District Court's conclusion of law on the merits is not material to its decision because it held it had no jurisdiction is it proper for a Circuit Court of Appeals to refuse to strike out this conclusion upon affirmance of the lower Court's decree.

### **Specifications of Error to Be Urged**

The Circuit Court of Appeals erred:

1. In holding that the Court lost jurisdiction *in rem* because no supercedeas bond was filed.

2. In holding that the claim for damages was merely incidental to the claim for possession.

3. In holding that the claim against Todd was not substantial, but merely formal.

4. In holding that the *Manuel Arnus* was in the possession of the United States under a claim of ownership.

5. In holding that the custody of Todd did not in law divest the possession of the United States.

6. In holding that the record showed that the custody of the vessel had been delivered to Todd for limited, temporary and special purposes.

7. In holding that the issue of right of possession as between petitioner and Todd presents nothing of substance for determination.

8. In holding that the United States of America being in possession of the vessel the District Judge was right in dismissing the libel for want of jurisdiction and that the rule of the *Jardine* case applies to the facts of this case.

9. In holding that the custody of Todd was the possession of the United States.

10. In holding that the principle that a ship in the public service of the United States is immune from seizure applies to this case.

11. In dismissing the libel *in rem*.

12. In affirming the judgment of dismissal *in personam* against Todd.

13. In not directing that the *Manuel Arnus* be delivered to petitioner.

14. In failing to hold that the District Court was in error in dismissing the libel for want of jurisdiction over the vessel and in holding that the vessel was not amenable to process of the District Court.



15. In failing to hold that the *Manuel Arnus* should be delivered to petitioner and in holding that the order of arrest and the attachment of the vessel by the United States Marshal be vacated.

16. In failing to hold that the District Court was in error in finding that at the time of the filing of the libel the United States of America was in possession of the vessel and claiming title thereto, and that petitioner may not inquire into the validity of the title and possession of the United States of America to the S.S. *Manuel Arnus*.

17. In failing to hold that the District Court erred in holding that it might not inquire into the validity of the proceedings under which it was claimed by the United States of America that the Republic of Mexico acquired title to the vessel, or into the validity of the proceedings taken in Mexico declaring the vessel abandoned and in not holding that under Mexican law the proceedings for declaration of abandonment of the vessel were invalid, gave no title to the vessel and that there was no abandonment of the vessel in Mexico.

18. In failing to hold that the vessel was taken from the possession of petitioner by Mexican naval authorities in Cuba and brought by them to Vera Cruz, Mexico, and that the Mexican Government wrongfully retained possession of the vessel after it was taken into Mexico and refused to allow petition to have possession of the vessel and negligently allowed the vessel to go aground and be severely damaged.

19. In failing to hold that the attempted requisition of the vessel by the United States was invalid and of no effect.

20. In failing to hold that the District Court erred in decreeing that the process *in personam* by which Todd was required to appear in that Court should be held for naught and vacated.

### **Reasons for Granting the Writ**

1. The decision of the Court below in granting respondent's motion to dismiss the appeal for lack of jurisdiction because no supersedeas bond had been filed, where the vessel remained in the territorial jurisdiction of the Court, is in conflict with the decision of this Court in *The Rio Grande*, 23 Wall. 458.

2. The decision of the Court below in refusing jurisdiction on the principle of sovereign immunity of the United States without proof of ownership or possession of the vessel is a denial of due process of law.

3. Where the Court below denies jurisdiction on the principle of sovereign immunity of the United States in a suit in admiralty in which a possessory libel is filed by a foreign sovereign also claiming ownership and right to possession, there is presented a novel question and one of general importance which should be decided by this Court.

4. The Court below in holding that it lost jurisdiction of the libel *in personam* upon dismissal of the libel *in rem* rendered a decision in conflict with a decision of the Circuit Court of Appeals of the Third Circuit in the case of *The Denny*, 127 F. (2d) 404.

5. The decision of the Court below in holding that the custody of the vessel by Todd for a limited, temporary

and special purpose did not divest possession of the United States is in conflict with the decision of this Court in *The Davis*, 10 Wall. 15.

6. The decision of the Court below in granting a petition of the United States to dismiss a libel *in personam* and *in rem* filed in a possessory suit for possession of a vessel in the physical possession of a third party, upon a mere suggestion of ownership and right to possession of the United States is in conflict with *United States v. Lee*, 106 U. S. 196.

A true copy of the affidavit of H. C. Hughes, duly sworn to the 14th of July, 1944 is hereto attached in support of this petition.

WHEREFORE your petitioner referring to the annexed brief in support of the foregoing reasons for review, respectfully prays that this Honorable Court issue a writ of certiorari directing the United States Circuit Court of Appeals for the Fifth Circuit to issue a full and complete transcript of the record herein to the end that the said cause may be reviewed and determined by this Court as provided by law and that the decree of the Circuit Court of Appeals may be reversed and that your petitioner may have such other and further relief as to this Honorable Court may seem just.

COMPANIA TRASATLANTICA,

By GEO. WHITEFIELD BETTS, JR.,  
Counsel for Petitioner.

Dated: July 13th, 1944.

IN THE  
SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_  
No. ....  
\_\_\_\_\_

COMPANIA TRASATLANTICA, ADMINISTRADA  
POR EL ESTADO,

*Appellant,*

*vs.*

UNITED STATES OF AMERICA, claimant of steamship  
"MANUEL ARNUS," and TODD-GALVESTON DRY  
DOCKS, INC.,

*Appellees.*

\_\_\_\_\_  
State of Texas            }  
County of Galveston }

On this day personally appeared before me H. C. HUGHES, Attorney at Law and Proctor in Admiralty, of Galveston, Texas, and being first duly sworn on oath deposes and says that the S.S. *Manuel Arnus*, a ship of Spanish Registry, was brought into Galveston from a port in Mexico in tow of two tugs; and about which vessel a suit with reference to the title and possession of same is now pending in this Court on a petition for certiorari from the United States Circuit Court of Appeals for the Fifth Circuit; that said vessel was moored alongside of the wharves of the Todd-Galveston Dry Docks Inc., and was kept at said wharves for many months; that while said vessel was moored at said wharves a suit was filed by Com-

pania Trasatlantica, Administrada Por El Estado in the United States District Court at Galveston for title and possession of same against the Todd-Galveston Dry Docks, Inc.; that said vessel was taken into possession by the United States Marshal and was later released when the suit was dismissed upon petition of the United States; that said vessel has at all times since the dismissal of said cause and the release of said vessel by the Marshal been located in the harbor of Galveston, Texas, the exact location being Pier 29, Galveston Wharf Company, having been moved there from the Todd-Galveston Dry Docks, Inc. wharves several months ago. There are watchmen from the Galveston Wharf Company police on board said vessel who are watching same for and on behalf of the War Shipping Administration. No repairs of any kind have ever been made upon said vessel after it left Todd-Galveston Dry Docks Inc., where some of the damaged machinery was taken out.

H. C. HUGHES

Sworn to and subscribed before me this 14th day of July, 1944.

JANE CROWE,  
Jane Crowe  
Notary Public in and for Galveston  
County, Texas.

(Seal)



## BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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### POINT I

**The Circuit Court of Appeal's decision dismissing the appeal because no supersedeas bond was filed is in conflict with decisions of this Court.**

The decree dismissing the libel was entered April 26th, 1943. Thereafter Todd filed its answer and moved for a dismissal as to it. The order was not entered on this motion until June 14th, 1943. Immediately thereafter, on July 1st, 1943, an order was entered allowing the appeal to the Circuit Court and requiring a cost bond in the sum of \$250. No supersedeas bond was filed by petitioner, the Court declining to give a stay sufficient for the necessary authority to be obtained from Spain.

When the appeal was argued below, the *Manuel Arnus* was still within the Southern District of Texas and within the territorial jurisdiction of both Courts (R. 135). An affidavit filed with the Circuit Court to that effect was not denied by respondent. As shown in the petition submitted herewith, the *Manuel Arnus* is still within the territorial jurisdiction of both Courts.

The only purpose of a supersedeas bond is to stay execution and in a possessory suit, pending appeal, to prevent a successful claimant from removing the vessel from the jurisdiction of the Court so as to defeat its order or decree in case the District Court be found in error. If the vessel remains in the jurisdiction of the Court she is sub-

ject at all times to the Court's orders and if the District Court be found in error, the Appellate Court can undoubtedly reverse its decree and direct the District Court to retake the vessel and deliver her to the libellant and decree damages for refusal to deliver her. It would be a sorry tribute to the administration of justice if an Appellate Court, with the subject of litigation still within its jurisdiction, could not correct an error committed by a lower Court and direct such restitution as justice might require, because a litigant by reason of poverty could not furnish a supersedeas bond. If this were an action for the recovery of possession of land which could not be removed from the jurisdiction, could it be successfully argued that both Courts had lost jurisdiction because a supersedeas bond had not been given?

This Court long ago pronounced that an actual and continual possession of the *res* was not required to sustain the jurisdiction of the Court and also held that it is only necessary that the *res* should be actually or constructively within the reach of the Court.

*The Rio Grande*, 23 Wall. 458.

In that case, the District Court for Alabama had dismissed a libel *in rem* and *in personam*, had allowed an appeal and fixed the amount of the bond, but before the appeal bonds were given, and because of some irregularity in the motion for the appeal, the proctor for claimants asked for and obtained from the Court an order of retention (restoration) of the vessel to them, and the Marshal having surrendered her to them, they accordingly immediately carried her out to sea (p. 460). The libellants thereafter gave their appeal bonds and the Circuit Court in spite of the removal reversed the District Court and decreed for



libellants, but the *res* had departed. She was then heard of at New Orleans and libellants libelled her anew in the District Court for Louisiana. A new owner now claimed the vessel and set up in its answer that at the time libellants took their appeal from the Alabama District Court, and when the Circuit Court rendered its decree the vessel was neither in the actual nor constructive possession of either Court but had been restored to the claimants; that as libellants had failed to move the District Court to set aside the decree of restoration or to appeal from same, they must be taken as having acquiesced in the execution of the judgment of the District Court. The District Court of Louisiana dismissed the libel but on appeal the Circuit Court reversed, as the Circuit Court of Alabama had, holding that the decision of the Circuit Court of Alabama was conclusive. The new owner appealed. This Court held that the removal of the vessel pending appeal was illegal and said:

“We do not understand the law to be that an actual and continuous possession of the *res* is required to sustain the jurisdiction of the court” (p. 463),

citing *The Brig Ann*, 9 Cranch. 289-290, in which the Court said:

“In order to constitute and perfect proceedings *in rem* it is necessary that the thing should be actually or constructively within the reach of the court” (p. 291).

This rule of law has been followed in the Federal Courts.

*The Villarperosa*, 43 F. Supp. 140 (E. D. N. Y.).

In that case the Government filed a libel for forfeiture against an Italian vessel because of wilful damages to the

vessel by its officers and crew. Thereafter the United States Maritime Commission requisitioned the vessel under the Idle Vessels Act of June 6, 1941 (50 U. S. C. A., § 193) and authorized its Secretary to take actual possession of the vessel, and resolved that the Appraisal Committee determine the compensation to be paid the owner therefor. The libellant moved for an order directing the United States Marshal and the Collector to comply with the notice of taking issued by the Maritime Commission. The Court stated that two of the questions involved were whether the Court might release the vessel to the Maritime Commission, and if it were so released, whether the order should contain a provision that if the libel for forfeiture failed, the vessel should be restored to the claimant, the owner, or fair compensation paid, and held (p. 145):

“There is no relinquishment of jurisdiction of the vessel by the granting of the libellant’s order. This Court’s jurisdiction of the vessel remains even though it has not the possession of the vessel. \* \* \* The Court would not lose jurisdiction of the vessel even though possession is lost without the consent of the Court.”

It ordered the vessel to be turned over by the Marshal to the United States Maritime Commission and permitted the Marshal to appoint the master of the vessel as Special Deputy Marshal, the vessel to be turned over by him to the Maritime Commission for the purposes of the requisition and to be returned to the custody of the Marshal upon being released therefrom. It is plain that such a Deputy Marshal would have no authority to act out of his District and that the possession of the vessel became that of the Maritime Commission.

*The Kaiser Wilhelm II*, 246 F. 786 (C. C. A. 3).

There a libel was filed by a British corporation for repairs against the German steamship *Kaiser Wilhelm II*. The German owner answered, contending that jurisdiction should not be exercised because both litigants were at war, and payment of debts by German to British subjects was forbidden. The libellant excepted to this answer and the Court dismissed the libel. Pending the appeal war broke out between the United States and Germany and the United States Government took possession of the ship by requisition under the joint resolution of Congress, approved May 12, 1917. The Court stated, page 789:

“The fact that the ship has now been taken from the possession of the court by the government would not prevent the court from hereafter adjudicating the several rights of the parties litigant if possession of the ship should later be restored, or if the government saw fit hereafter and of its own accord to pay into court such amount as would satisfy this lien. It is apparent, therefore, that no harm can be done to the two litigants or to the government by the lower court retaining jurisdiction of the libel for the present.”

• • • • •

“This case is exceptional in its situation, and calls for the exercise of that range of discretion which the broad powers of a court of admiralty enable it to exercise.”

The Court accordingly directed that the decree be reversed and the libel reinstated.

The only cases cited by the Circuit Court in support of its opinion that the Court lost jurisdiction *in rem* were *The Denny*, 127 F. (2d) 404 (C. C. A. 3); *Canal Steel Works, Inc. v. One Drag Line Dredge*, 48 F. (2d) 212 (C. C. A. 5)

and *The Kotkas*, 135 F. (2d) 917 (C. C. A. 5). In each of these cases the vessel had been removed from the territorial jurisdiction of the Court, which clearly distinguishes them from the instant case.

In the *Denny* case a libel for possession of the steamer and her cargo was filed *in rem* and *in personam* for their detention. It was stated at bar that since her release the vessel had been engaged in trade between American and Canadian ports and thus she had gone out of the jurisdiction. It also appeared that the cargo had been sold and therefore when the appeal was taken it was held that the Court had neither actual nor constructive possession of the *res*. The libellants maintained (p. 406) that the admiralty court retained jurisdiction despite the removal of the *res*, citing *The Rio Grande* case (*supra*), where jurisdiction was sustained in spite of such removal. In reply to this contention, the Court said:

“In the present case the removal was neither accidental, fraudulent nor improper” (p. 407).

This shows that in the *Denny* case there was a physical removal from the district.

In *Canal Steel Works* case, decided by the same Circuit Court below, apparently the dredge which had been libelled and released by the Marshal was not in the jurisdiction when the appeal was taken or decided; otherwise Judge FOSTER would not have said in his opinion that there was no subject-matter upon which the judgment of the Court could operate.

That that must have been so appears from the later case decided by the same Court, *The Kotkas*, *supra*, cited below. In that case the *Kotkas* was libelled for possession and upon dismissal of the libel the ship was released to

its master. The Circuit Court of Appeals, Fifth Circuit, said at page 918:

“Appeal was taken without the filing of a supersedeas bond, and it appears that the vessel is now beyond the territorial jurisdiction of the court. There is now no subject-matter upon which the judgment of this Court could operate to give relief to appellant” (citing *Canal Steel*).

The appellant contended that the libel was also *in personam* but the record showed no personal service upon the master.

From the foregoing it is apparent that the lower Court's decision is contrary to the decisions of this Court and the cases cited by the lower Court are not in point because in those cases the *res* did not remain within the territorial jurisdiction of the Courts.

## POINT II

**The decision of the Circuit Court in holding that it lost jurisdiction of the libel *in personam* upon dismissal of the libel *in rem* is inconsistent with a decision of the Circuit Court of Appeals of the Third Circuit.**

The Circuit Court held that the only claim really asserted by petitioner was a claim to possession and that the claim for damages against Todd was merely incidental. The libel specifically avers in Article Fifth (p. 5) that on March 4th, 1943 a demand was made by libellant upon Todd for delivery and possession of the vessel which was refused, and that petitioner was damaged thereby. In its prayer for relief petitioner requested damages arising from the detention of the vessel.

There was nothing in the record to warrant the Circuit Court's conclusion that the damage for the detention of the vessel was incidental or of no substance. On the contrary it is quite apparent that this is a very real claim and that petitioner was damaged by its loss of use of the vessel.

The holding of the Circuit Court is in conflict with the decision in the case of *The Denny, supra*. Although in that case the Circuit Court of Appeals of the Third Circuit sustained the dismissal of the libel *in rem* for lack of jurisdiction, because the vessel had left the jurisdiction of the Court, the decree was reversed and the case was remanded with directions to reinstate the libel as to the claims *in personam* and to grant the parties a rehearing upon this claim. The Court said, page 407:

“The libel, however, is not only *in rem* for possession of the vessel and cargo but also *in personam* for damages for their wrongful detention. The prayers for process and for relief are in the form customarily used in a libel which combines a suit *in rem* with one *in personam*. 2 Benedict on Admiralty, §§ 262, 263. Insofar as the suit is *in personam* this court retains the jurisdiction which it acquired when the respondents were served with process. We therefore pass to the consideration of the libellants' claims against the respondents *in personam*.”

This conflict between the Third and Fifth Circuit Courts of Appeals has never been but should be settled by this Court.

### POINT III

**Where the United States merely claims immunity from seizure of a vessel, it is a denial of due process to grant such immunity summarily without proof of the vessel's ownership or possession.**

The possessory libel was filed *in personam* against Todd and *in rem* against the S.S. *Manuel Arnus*. The libel was not filed against the United States of America. The issues to be tried between libellant and Todd are those of ownership of the *Manuel Arnus* and the right to possession thereof and damages for detention. The United States injected itself into the suit on a suggestion of title in it and right to possession thereof, and asked that the Court prevent petitioner from having the issues between it and Todd litigated, on the ground that the Court had no jurisdiction. The decisions of the lower Courts have denied to petitioner the right to have these issues determined between it and Todd. Further considering the claims of the United States, petitioner has been denied the right to prove its ownership and right to possession as against that of the United States. The Spanish Government, as requisition owner of the *Manuel Arnus*, had a right under our Constitution to maintain this suit in our courts.

*The Sapphire*, 11 Wall. 164;

*King of Spain v. Oliver*, 2 Wash. C. C. 429.

The District Court dismissed the libel citing 46 U. S. C. A. 741, *et seq.*, holding that under that statute it had no jurisdiction and cited in support thereof *United States v. Jardine*, 81 F. (2d) 746, and *The Western Maid*, 257 U. S. 419. The District Court held that it was undisputed that

the United States had possession. The record clearly shows that possession by the United States was vigorously and specifically denied in petitioner's answer to the petition of the United States (p. 34).

The Circuit Court did not base its holding of immunity on the statute (46 U. S. C. A. 741, *et seq.*) but held that the *Jardine* case controlled. The Circuit Court also concluded that the United States had possession on the theory that the possession of a bailee for a limited purpose is that of the bailor, citing 6 Am. Jur. Sec. 91, page 213. It is submitted that this conclusion has no factual foundation. The bailment agreement between Todd and the United States was not before the Court.

*Neither of the lower courts held that the United States had legal title to the Manuel Arnus. Both courts held that the United States was in possession of the vessel. This is the reverse of the claim of the United States. The government claimed it was "the sole owner of the steamship Manuel Arnus and entitled to the exclusive possession thereof" (p. 9).*

The libel alleges in Paragraphs Fourth and Fifth that the *Manuel Arnus* was in the possession of Todd at its repair yard in Galveston, Texas, and that libellant demanded possession of said vessel on March 4th, 1943, which was refused (p. 5). In its petition the Government does not deny this allegation, but merely rests on an allegation that on March 11th, 1943, the United States of America was the owner of the *Manuel Arnus* and entitled to possession thereof (pp. 7 and 9). Nowhere in the petition of the United States or the exhibits attached thereto is there any statement or any documentary proof that the United States of America was in possession of the *Manuel Arnus* at the time the libel was filed on March 11th, 1943.



After the District Court entered its findings of fact and conclusions of law on April 15th, 1943, and after the final decree was entered on April 26th, 1943, the appellee Todd filed an answer on May 15th, 1943. This answer was not before the District Court when it made its decision. The reason why the Government could not prove possession appears from an examination of this answer of Todd, wherein it alleges that it received the *Manuel Arnus* from the United States Maritime Commission on November 30th, 1942, under instructions to make a survey and estimate of repairs. This is a mere allegation and cannot be considered as evidence of the bailment agreement. Neither the Government nor Todd submitted the bailment agreement to the District Court as evidence of possession by the United States. Neither the Government nor Todd offered any evidence as to when the *Manuel Arnus* was returned to the United States of America, if it was, or under what agreement. The mere allegation by Todd that "\* \* \* Said vessel is now in the possession of the United States Maritime Commission at the yards of this respondent in Galveston, Texas," in its answer dated May 15, 1943 (pp. 29, 30), is no evidence that the *Manuel Arnus* was in the possession of the United States on March 11th, 1943. Likewise, Todd's allegation in its answer that the *Manuel Arnus* was in the possession of the United States Maritime Commission at the time the libel was filed is not evidence thereof, and, on the contrary, is inconsistent with its allegation that Todd received the steamship from the Commission on November 30th, 1942, and that it was still at its yards on May 15th, 1943 (pp. 29, 30).

Furthermore, the libel shows (p. 4), and it is admitted, that the vessel was at Todd's ship repair yards when the libel was filed. Such a possession cannot be concluded as for a limited, special or temporary purpose within the

meaning of the general proposition of law cited by the Circuit Court. If any inference is to be drawn in the absence of the bailment agreement it is that the vessel was to be repaired, refitted and made seaworthy by Todd. That is its business. The possession of such a bailee is not that of a bailor. *Long v. Tampico*, 16 Fed. 491.

Both decisions below are in conflict with the decision of this Court in *The Davis*, 10 Wall. 15. In determining what constituted possession to justify a claim of immunity, the Court said by Mr. Justice MILLER (p. 21):

“But what shall constitute a possession which, in reference to this matter, protects the goods from the process of the court? The possession which would do this must be an actual possession, and not that mere constructive possession which is very often implied by reason of ownership under circumstances favorable to such implication. We are speaking now of a possession which can only be changed under process of the court by bringing the officer of the court into collision with the officer of the government, if the latter should choose to resist. The possession of the government can only exist through some of its officers, using that phrase in the sense of any person charged on behalf of the government with the control of the property, coupled with its actual possession. This, we think, is a sufficiently liberal definition of the possession of property by the government to prevent any unseemly conflict between the court and the other departments of the government, and which is consistent with the principle which exempts the government from suit and its possession from disturbance by virtue of judicial process.”

There is absolutely no evidence in this case that any officer of the United States was in possession of the *Manuel Arnus* or that he was ousted of possession by the United States Marshal when the libel was filed.

Neither under common law nor under 46 U. S. C. A., Section 741, *et seq.*, was the United States entitled to have the libel dismissed.

This Court long ago pronounced the common law to be that an action may be commenced against agents or bailees of property claimed to be owned by the Government, and if the Government intervenes, it must prove its legal title or right to possession on a trial the same as any other litigant, and in such cases it cannot succeed upon a claim of immunity upon a mere suggestion of title or possession.

*United States v. Lee*, 106 U. S. 196.

In that action a suggestion had been filed by the United States claiming that the property involved was owned by the Government and had been possessed by it for years. The Court refused to recognize the claim without due proof thereof and quoted from the opinion of Chief Justice MARSHALL in the admiralty case of *United States v. Peters*, 5 Cranch. 115, as follows, page 210:

*“ ‘but it certainly can never be alleged that a mere suggestion of title in a State to property in possession of an individual must arrest the proceedings of the court, and prevent their looking into the suggestion and examining the validity of the title.’* (Italics by the court.)

“The case before us is a suit against Strong and Kaufman, as individuals, to recover possession of property. The suggestion was made that it was the property of the United States, and that the court, without inquiring into the truth of this suggestion, should proceed no further; and in this case, as in that, after a judicial inquiry had made it clear that the property belonged to plaintiff and not to the United States, we are still asked to forbid the court below to proceed further, and to reverse and set

aside what it has done, and thus refuse to perform the duty of deciding suits properly brought before us by citizens of the United States."

The Court further said, page 220:

"Not only that no such power is given, but that it is absolutely prohibited, both to the executive and the legislative, to deprive anyone of life, liberty, or property without due process of law, or to take private property without just compensation."

See also:

*Philadelphia Co. v. Stimson Co.*, 223 U. S. 605, at 619.

The case of *U. S. v. Jardine*, *supra*, relied upon by the Circuit Court, is directly in conflict with the principle enunciated in the above case. The Circuit Court for the Fifth Circuit there held that libellant had no right to try out the issues of title and rightful possession of a Coast Guard cutter by the United States on the theory that the possession of a public vessel by the Government under a claim of right prevented libellant from trying out the title to ascertain if the possession was rightful. In support of its contention the Court cited *The Siren*, 7 Wall. 152. That case does not support such a conclusion. There, this Court held that the lower Court had jurisdiction of a claim against the proceeds of a vessel sold as a prize where the United States had libeled the vessel.

The statute, 46 U. S. C. A. 741, relied upon by the District Court provides:

"Exemption of United States vessels and cargoes from arrest or seizure.

No vessel owned by the United States \* \* \* or in the possession of the United States \* \* \* shall \* \* \* be subject to arrest or seizure \* \* \*."

The statute does not say a vessel claimed to be owned by the United States or claimed to be in its possession is immune from seizure. Certainly a reasonable interpretation of the language used, which is the only interpretation permitted, is that the words "owner" and "possession" mean "rightful" owner and "rightful" possession. No intent could be attributed to the legislature to authorize immunity for "wrongful" ownership or "wrongful" possession by the Government. The painstaking care which the legislature takes to safeguard a grant of requisitioning power in the Government is ample evidence that the statute now in question cannot have been intended to provide a cloak of immunity for wrongful ownership or wrongful possession. It is submitted that the statute was intended to prevent interference with the Government in the operation of merchant vessels actually owned by it and in its possession and engaged in carrying out the Government's business. *Banque-Russo v. U. S. Shipping Board*, 266 F. 897. A vessel undergoing repairs preparatory for service is not such a vessel in possession of the Government. *Long v. The Tampico, supra*.

A court interpretation of any statute which would permit recovery upon a mere claim of ownership or possession without evidence thereof, where a statute specifically provides for a recovery only on condition of ownership or possession, would be universally condemned.

Thus, the decisions of the lower Courts, under both common law and the statute, are in conflict with the decisions of this Court.

## POINT IV

**The principle of sovereign immunity of the United States should not be applied in derogation of the rights of another sovereign under international law.**

The District Court refused to inquire into the validity of the proceedings under which the Republic of Mexico claimed to have acquired the *Manuel Arnus* and cited *Underhill v. Hernandez*, 168 U. S. 250; *Oetjin v. Central Leather Co.*, 246 U. S. 297; *Banco de Espana v. Federal Reserve Bank*, 114 F. (2d) 438, and similar cases in support of its contention. These cases are authority for the proposition that our Courts will not inquire into the acts of foreign sovereign powers committed within their territorial limits. Petitioner has no quarrel with this law, but contends that it is not applicable to the facts of this case. The Circuit Court made no comment on this phase of the case. Under well-recognized principles of international law the lower Courts should have inquired into the acts of the Mexican Government which occurred in waters extra-territorial to Mexico, and if they had done so, they would have found that petitioner is the rightful owner and entitled to possession of the *Manuel Arnus*.

The facts clearly show that while the *Manuel Arnus* was owned by a Spanish corporation and lawfully in Cuban waters she was illegally and by force and ruse seized by the armed forces of the Government of Mexico and taken to Mexico. This act did not occur within the territorial limits of Mexico so as to make applicable the law of the *Underhill* and similar cases. It was an act which occurred without the territorial waters of Mexico and the United States and the applicable law is international law which the lower Courts refused to consider.

Since the original taking by the Government of Mexico was illegal, the subsequent acts of the Government of Mexico, such as the purported declaration of abandonment and the sale of the vessel to the United States, did not purge the original wrong. It was a continuing wrong. The *Manuel Arnus* was brought into the territorial waters of Mexico without authority of its owner, contrary to its express protest and in violation of the decrees of the Cuban Courts, and, therefore, it was not subject to the Mexican law, and when it was later taken into the territorial waters of the United States without the consent of its owner it was entitled to immunity from the laws of the United States. International law is the applicable law.

It is a fundamental proposition that international law is a part of the law of the land and must be administered whenever it is involved in cases presented to our Courts for determination.

*The Paquete Habana*, 175 U. S. 677, page 700:

“International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination.”

*The Lusitania*, 251 Fed. 715, page 732:

“The United States courts recognize the binding force of international law.”

It is a well-recognized principle of international law that where a foreign vessel enters territorial waters of another nation on account of *force majeure* the vessel and owners are entitled to immunity from the laws of the local jurisdiction.

*The New York*, 3 Wheaton 59.

The *New York* was libelled for importation of certain cargo into the United States in violation of the Non-Inter-course Act of March 1st, 1809 between Great Britain and the United States. A claim was interposed on the ground that the vessel was compelled to put into the port of New York due to the fact that it was disabled by stress of weather. While the Court held that the allegations that the vessel was compelled to enter the port of New York by stress of weather were not established, it recognized the principle of international law that the vessel would not have been subject to the laws of the United States, if it had been forced into New York by stress of weather, in saying, page 68:

“The necessity must be urgent, and proceed from such a state of things as may be supposed to produce on the mind of a skillful mariner, a well-grounded apprehension of the loss of vessel or cargo, or of the lives of the crew.”

See also:

*Kansas v. Colorado*, 206 U. S. 46;

*The Aeolus*, 3 Wheaton 392;

*Brig Short Staple v. United States*, 9 Cranch. 55 (1815);

*The Nuestra Senora de Regla*, 17 Wall. 29;

*United States v. Eagle Indemnity Co.*, 18 F. (2d) 135, affd. 22 F. (2d) 388, cert. den. 276 U. S. 624;

*The Squanto*, 13 F. (2d) 548, cert. den. 273 U. S. 727.

It has also been recognized in the lower Courts.

*United States v. Sullivan, et al.*, 26 F. (2d) 606;

*The Louise F.*, 293 Fed. 933.



The foremost text writers on international law recognize this well established principle.

Hackwork, *Digest of International Law*, Vol. II, page 277;

Jessup, *Law of Territorial Waters and Maritime Jurisdiction*, pages 194-208;

Moore, *International Law Digest*, Vol. II, pages 339 to 362.

The United States Department of State has vigorously supported the immunity of vessels which enter foreign ports due to stress or seizure.

*The Rebecca*, Moore's *International Law Digest*, pages 345, 346. Report of Mr. Bayard Sec. of State, Feb. 26, 1887, S. Ex. Doc. 109, 49 Cong., 2 sess.

The United States through its attorneys general in the past has repeatedly expressed its opinion in favor of the principle contended for by petitioner herein.

1 Opinions of Attorneys General 509—the *Maria*;

4 Opinions of Attorneys General 98—the *Industria*.

Although the Circuit Court did not base its decision under the Statute 46 U. S. C. A. 471, *et seq.*, as did the District Court it is submitted that this statute should have been construed in harmony with international law. This principle was recognized by this Court in a case involving facts somewhat similar to those involved in the present case.

*Alexander Murray v. Schooner Charming Betsy,*  
2 Cranch. 64, 1 U. S. 450.

The *Charming Betsy*, an American vessel owned by citizens of the United States, sailed from Baltimore April 10th, 1800, for St. Bartholomew's for the purpose of being sold. The cargo on board was sold at St. Bartholomew's, but the vessel could not be sold there so the captain proceeded with her to the Island of St. Thomas. There she was sold to one Jared Shattuck who put a cargo aboard and cleared her out as a Danish vessel for the Island of Guadeloupe. On her way she was captured by a French privateer as a prize. She was subsequently recaptured by Captain Murray, captain of the frigate *Constellation*, and taken to Martinique. When she got to Martinique her captain claimed to have his vessel and cargo restored as being the property of a Dane. Shattuck was born in the United States, but had moved to St. Thomas where he became a Danish subject. Captain Murray, however, considered Shattuck an American citizen who had violated the law prohibiting intercourse between the United States and France and the sale of the vessel as a mere subterfuge to avoid that law, so he sold the cargo in Martinique and brought the vessel to Philadelphia where she was libelled under the non-intercourse law. The cargo and vessel were claimed by the Danish consul as being the *bona fide* property of a Danish subject.

The lower Court declared the seizure was illegal and that the vessel should be restored and the proceeds of the cargo paid to the claimant, together with the damages Shattuck sustained by reason of the premises. The Circuit Court affirmed the decree so far as it directed restitution of the vessel and payment to the claimant of the net proceeds of the sale of the cargo, and reversed as to the rest.

Chief Justice MARSHALL, speaking for the Supreme Court of the United States, in construing the non-intercourse federal act, said at page 452:

“It has also been observed that an act of congress ought never to be construed to violate the law of nations if any other possible construction remains, and, consequently, can never be construed to violate neutral rights, or to affect neutral commerce, further than is warranted by the law of nations as understood in this country.

These principles are believed to be correct, and they ought to be kept in view in construing the act now under consideration.”

The Court held that the vessel was not liable to confiscation, that the recaptors were not entitled to salvage and affirmed the decree of the Circuit Court so far as it affirmed the decree of the District Court which directed restitution of the vessel and payment to the claimant of the net proceeds of the sale of the cargo; and reversed and modified that portion of the decree whereby the claim of the owner for damages for the seizure and retention of his vessel was rejected.

The decisions below are also in violation of international comity. Petitioner submitted a certification by Juan F. de Cardenas, Ambassador of Spain to the United States, wherein he definitely states that pursuant to the Spanish law of September 1, 1939, and the decree of September 23, 1939, which are attached to his certification, the “ownership of the S.S. *Manuel Arnus* became vested in Compania Trasatlantica Administrada por el Estado, a company administered by the Spanish State, and that since September 23rd, 1939, the company has continued to own the vessel.” The United States submitted a certification of the Mexican Ambassador of the law cited in the Declaration of Aban-

donment. There is no certification by the Mexican Ambassador that Mexico acquired title to the *Manuel Arnus* by virtue of the Declaration of Abandonment.

The lower Courts were thus confronted with a representation of ownership by one friendly nation, Spain, and a representation of ownership by the United States based upon a certification of a law cited in a Declaration of Abandonment by another friendly nation, Mexico. It completely ignored the representations of the Spanish Ambassador but chose to accept the representations of the Mexican Ambassador which did not prove ownership in the Mexican Government prior to the delivery of the bill of sale to the United States by Mexico. It is a dangerous precedent to accept the representations of one friendly foreign sovereign to the benefit of our Government and ignore those of another friendly foreign sovereign. Respect for foreign dignity short of equality with our own is frowned upon by our courts.

*Long v. The Tampico*, 16 Fed. 491, 495:

“By international comity, and that tacit agreement which constitutes the law of nations, every government accords to every other friendly power the same respect to its dignity and sovereignty, and the same consequent immunity from suit, both as respects the person of the sovereign as well as the national property devoted to the public service, which it enjoys itself within its own dominions.”

Furthermore, in considering the equities of the United States and of the Spanish Government, the United States of America, prior to its purchase of the *Manuel Arnus*, was advised by petitioner of the illegal seizure of the vessel by the Mexican Government (pp. 106-108). The United States of America was not an innocent purchaser for value.

It had a duty the same as any other purchaser to make inquiries when put on notice as to the illegality of the title of the Mexican Government. There is no evidence that it made such inquiry.

The lower Court's decision should be reviewed because of its failure to recognize the injustice committed petitioner in violation of well established principles of international law. Petitioner owned the *Manuel Arnus*. It was illegally seized by Mexico, sold to the United States and petitioner has not been compensated. The importance and novelty of the questions involving two friendly powers, Mexico and Spain, requires consideration and a decision by our highest Court.

## CONCLUSION

**It is respectfully submitted that this petition for writ of certiorari to review the decree of the Circuit Court of Appeals for the Fifth Circuit should be granted.**

July 14th, 1944.

GEO. WHITEFIELD BETTS, JR.,  
*Counsel for Petitioner.*

WILLIAM LOGAN, JR.,  
HELEN F. TUOHY,  
*Of Counsel.*

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No. 278

In the Supreme Court of the United States

OCTOBER TERM, 1944

COMPANIA TRANSATLANTICA (HONDURAS) COMPANIA  
TRANSATLANTICA ADMINISTRADA POR EL GOBIERNO  
PETITIONER

S.S. 'MANUEL KENUR' HER ENGINEER, UNITED  
STATES OF AMERICA, CLAIMANT, APPLICANT  
ORALLY, AND TORO GARCIA DON ENRIQUE

ON PETITION FOR A WRIT OF HABEAS CORPUS  
AND FOR A WRIT OF HABEAS CORPUS  
DUI

STATE OF THE UNITED STATES OF AMERICA

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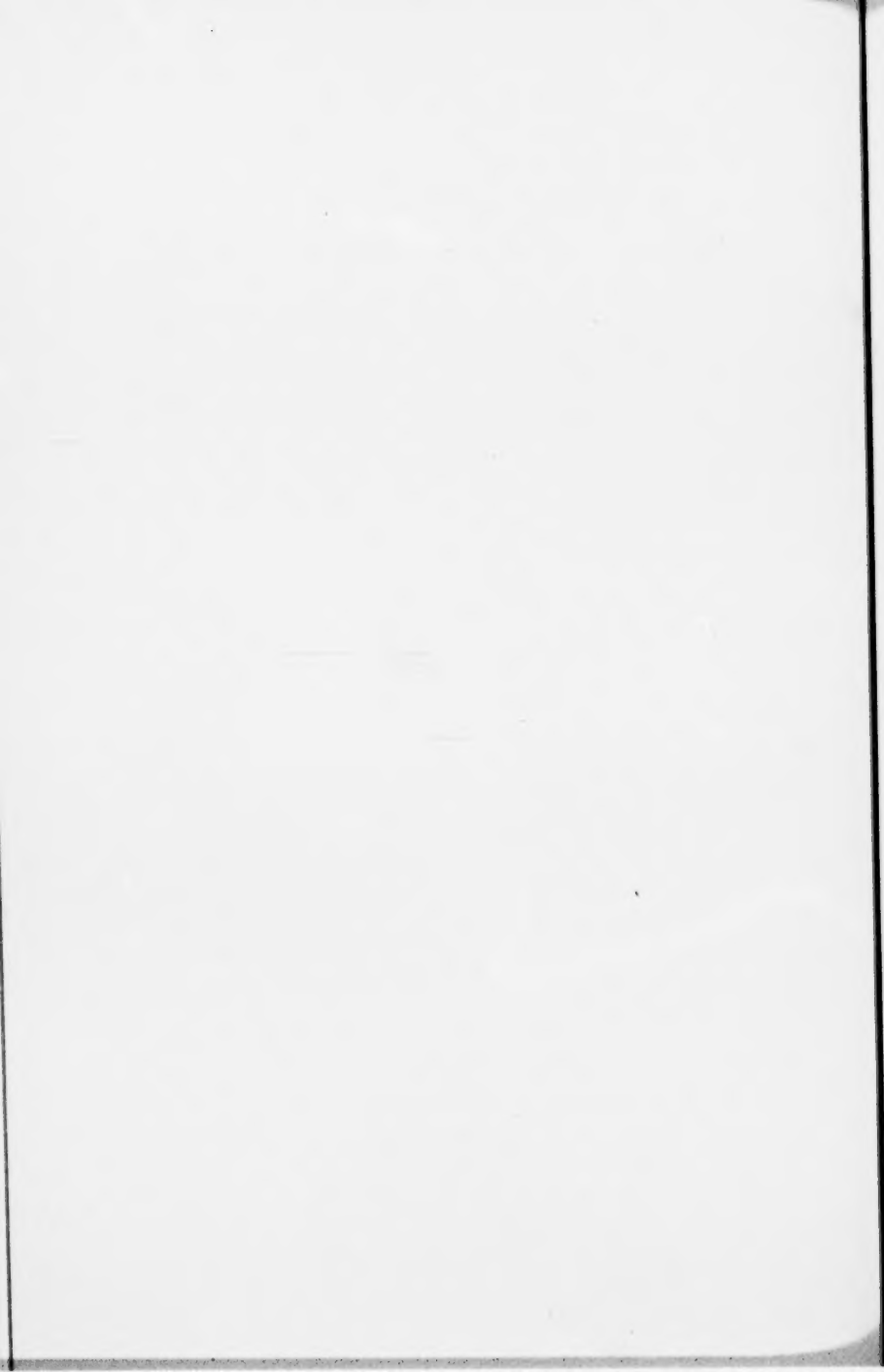
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| Act of June 6, 1941, 55 Stat. 242, 50 U. S. C. App., Supp. III, Sees. 1271-1275                            | 5  |
| Republic of Mexico, Law on General Means of Communication, Arts. 215, 217, 218, effective January 19, 1940 | 4  |
| Admiralty Rules of the Supreme Court, Rule 57  | 8  |
| Executive Order, No. 9054, February 7, 1942, 7 Fed. Reg. 837   | 5  |
| Federal Rules of Civil Procedure, Rule 73 (d)  | 8  |
| Rules of the Circuit Court of Appeals for the Fifth Circuit, Rules 10, 12                                  | 9  |
| Rules for the Southern District of Texas, Admiralty Rule 18  | 8  |





# In the Supreme Court of the United States

OCTOBER TERM, 1944

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No. 278

COMPANIA TRASATLANTICA (FORMERLY COMPANIA  
TRASATLANTICA ADMINISTRADA POR EL ESTADO),  
PETITIONER

*v.*

S. S. "MANUEL ARNUS," HER ENGINES, ETC., UNITED  
STATES OF AMERICA, CLAIMANT, APPEARING SPE-  
CIALY, AND TODD-GALVESTON DRY DOCKS, INC.

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIR-  
CUIT*

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**BRIEF FOR THE UNITED STATES IN OPPOSITION**

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**OPINION BELOW**

The opinion of the circuit court of appeals (R. 134-137) is reported at 141 F. (2d) 585. The findings of fact and conclusions of law of the district court (R. 118-120) are reported at 51 F. Supp. 577.

**JURISDICTION**

The judgment of the circuit court of appeals (R. 137) was entered on March 28, 1944. The time within which to file the petition for writ of certiorari was extended to and including July 28, 1944, by an order of Mr. Justice Jackson dated June 23, 1944 (R. 138). The petition for a writ of certiorari was filed on July 21, 1944. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

**QUESTIONS PRESENTED**

1. Whether the circuit court of appeals has jurisdiction of an appeal where a possessory libel *in rem* in admiralty has been dismissed and the vessel released unconditionally by the district court before any stay or supersedeas was sought.

2. Where a vessel to which the United States asserts title has been placed by it in the custody of a private company for the purpose of estimating the cost of repairs, whether one claiming title to the vessel has a cause of action *in personam* against the private company for damages for the vessel's detention.

3. Whether a court of the United States may consider the validity of acts of a foreign government done within that government's territorial jurisdiction.

## STATEMENT

Petitioner is a Spanish corporation which since September 23, 1939, has been operated and controlled by the Spanish Government (R. 4). On March 11, 1943, asserting title, it filed in the United States District Court for the Southern District of Texas a libel (R. 4-6) *in rem* and *in personam* against the S. S. *Manuel Arnus*, a vessel registered at Barcelona, Spain (R. 4), and respondent Todd-Galveston Dry Docks, Inc., a Delaware corporation doing business in Texas (R. 28), seeking possession of the *Manuel Arnus* and damages for her detention. On the same day, process of the court was issued and served on the vessel and on respondent Todd-Galveston (R. 10). The United States filed a petition in intervention (R. 7-11), supported by documentary exhibits (R. 12-27), asserting that it was the sole owner of the vessel and entitled to possession of it, and praying that the order for attachment of the S. S. *Manuel Arnus*, previously issued, be vacated and the libel dismissed for want of jurisdiction. Petitioner filed an answer to the petition in intervention (R. 34-37), accompanied by supporting affidavits and exhibits (R. 38-117). Pursuant to agreement of the parties (R. 59, Pet. 4), the case was submitted on pleadings, affidavits, and exhibits for determination of the questions raised by the petition of the United States and the answer of petitioner.

From these, the following undisputed facts appear:

The *Manuel Arnus* arrived at Havana, Cuba, on October 25, 1936 (R. 39), after the outbreak of the Spanish Civil War. During her voyage, a "Worker's Committee" had taken control of the vessel, refusing to recognize the authority of her master (R. 39). Following her arrival in Havana, the Spanish Consul General in Cuba appointed officers of the Mexican Navy to take command of the vessel, but the master, and the Havana agents of petitioner, refused to recognize their authority (R. 40-42). The Cuban Government refused to take any part in this dispute (R. 42). On March 27, 1938, the vessel was removed to Vera Cruz, Mexico, under the command of officers of the Mexican Navy and over the protest of petitioner (R. 43). On March 20, 1941, a declaration of abandonment was issued by the Director General of Merchant Marine of the Republic of Mexico (R. 7-8, 13-14) declaring that the vessel had been anchored at Vera Cruz since 1937 [1938] without a recognized legal owner and had been abandoned by its legal owner; that the vessel was in urgent need of repair and constituted a menace to navigation; that its crew had refused orders of the Mexican Government for towage to a place of greater safety; and that the vessel had accordingly been abandoned within the terms of articles 215, 217, and 218, par. 4 of the Law on General Means of

Communication, which became effective January 19, 1940 (which are set out at R. 15-17). The order directed the captain of the port to take possession of the vessel, and on March 21, 1941, the Captain of the Port of Vera Cruz, Republic of Mexico, did take possession of the vessel in the name of the Government of Mexico (R. 8, 47). On or about November 24, 1942, the vessel was towed to Galveston, Texas, for purposes of repair (R. 9, 58).

On March 3, 1943, the Republic of Mexico executed a bill of sale to the United States, transferring all right, title, and interest in the vessel as of September 24, 1942, and warranting the title of the seller (R. 9, 22-24). On or about November 30, 1942, Todd-Galveston received the vessel from the United States Maritime Commission with instructions to make a survey and estimate of the cost of repairing it and making it seaworthy, and it subsequently made such a survey (R. 29-30). On March 11, 1943, the date of filing of the libel herein, the War Shipping Administrator, acting under authority of the Act of June 6, 1941 (55 Stat. 242, 50 U. S. C. App., Supp. III, Secs. 1271-1275), Section 902 of the Merchant Marine Act of 1936 as amended (49 Stat. 2015, 46 U. S. C. Sec. 1242), and Executive Order No. 9054 of February 7, 1942 (7 Fed. Reg. 837), requisitioned all outstanding rights or interests in the vessel, if any, which had not already been acquired by the United States, and notice of such

requisition was duly posted on the vessel and communicated to the interested parties (R. 10-11, 24-27).

On April 15, 1943, the district court entered findings that the United States had acquired title to the vessel by bill of sale from the Republic of Mexico executed March 3, 1943, and transferring title as of September 24, 1942. The court held that it could not inquire into the validity of the proceedings by which the Republic of Mexico had acquired title and that since the United States was in possession of the vessel, claiming title to it, the vessel was not amenable to the process of the court (R. 118-120). Accordingly, on April 26, 1943, the district court entered a decree (R. 120-122) dismissing the libel for want of jurisdiction, vacating all process theretofore issued, including the arrest of the *Manuel Arnus*, and ordering the Marshal to release the vessel and deliver it to the United States. A writ of release was issued April 28, 1943, and was returned by the Marshal April 30, 1943; the Marshal's return states that the vessel was on April 28, 1943, released from the custody of the Marshal by the removal of notices from the vessel and by notification to appropriate officers of the War Shipping Administration and Todd-Galveston.<sup>1</sup> Upon the answer and motion to dismiss of respondent Todd-

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<sup>1</sup> The writ and the return to it are not in the record, but copies of them, certified by the clerk of the district court, were attached to the brief of the United States in the circuit

Galveston Dry Docks, Inc., both filed May 15, 1943 (R. 28-31), to which no responsive pleadings were filed, the court on June 14, 1943, entered a further order (R. 122-123) declaring that the case had on April 26, 1943, been "fully and completely dismissed as to all parties."

On July 1, 1943, the District Judge entered an order (R. 131) allowing petitioner's appeal to the circuit court of appeals "without deciding whether the questions involved are or are not moot." and staying further action on the decree of April 26, 1943, pending appeal. The circuit court of appeals, on motion of the United States (R. 132-133), dismissed the appeal insofar as the action was *in rem* and affirmed the judgment of dismissal of the district court insofar as the action was *in personam* (R. 137), holding that insofar as the appeal was *in rem* it was moot since the vessel was no longer in the custody of the court (R. 136), and that the asserted claim *in personam* against respondent Todd-Galveston "presents nothing of substance for determination" since it appeared that the vessel was in the possession of the United States and that custody had been delivered to Todd-Galveston for a limited purpose only (R. 136-137).

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court of appeals and are set forth in the Appendix hereto (pp. 15-18, *infra*). Petitioner does not deny that the vessel was released in the manner set forth in the return.

## ARGUMENT

Petitioner contends that the decision of the court below dismissing the appeal because there was no longer a *res* in the custody of the court to support the libel is erroneous and in conflict with the decision of this Court in *The Rio Grande*, 23 Wall. 458; that the court erred in affirming the dismissal of the libel *in personam* against the Todd-Galveston Dry Docks, Inc.; and that the court improperly refused to conduct a judicial inquiry into the title which the Mexican Government had acquired to the *Manuel Arnus* prior to its transfer to the United States. We submit that these contentions are unsound.

1. Under Rule 18 of the Admiralty Rules for the Southern District of Texas, property seized by the Marshal may be released:

Fourth, in possessory and petitory suits upon the order of the Court only, and on such security and terms as ordered.

Rule 57 of the Admiralty Rules of this Court likewise contemplates the release of property in the custody of the Marshal upon order of the district court. The district court's decree of April 26, 1943, expressly directed the Marshal forthwith to release the *Manuel Arnus* from custody, and made no provision for security. In releasing the vessel on April 28, 1943, therefore, the Marshal acted in compliance with the district court's orders and in conformity with the applicable rules of court.



Rule 73 (d) of the Federal Rules of Civil Procedure, made applicable to admiralty cases by Rules 10<sup>2</sup> and 12<sup>3</sup> of the Rules of the Circuit Court of Appeals for the Fifth Circuit, provides that "whenever an appellant entitled thereto desires a stay on appeal, he may present to the court for its approval a supersedeas bond \* \* \*." Petitioner filed no supersedeas bond and made no request for a stay until its petition for appeal, allowed July 1, 1943, long after the vessel had been released; nor did it at any time apply to the district court to modify the terms of its order of April 26, 1943, directing the vessel's unconditional release from custody. It is clear, therefore, that the Marshal's release of the vessel was proper, and that when the appeal was before the circuit court of appeals there was neither actual nor constructive possession of the vessel.

The vessel having been properly released, there was no longer a *res* before the district court and hence no jurisdiction of a proceeding *in rem*. Cf. *The Brig Ann*, 9 Cranch 289; *Taylor v. Carryl*, 20 How. 583, 599-600.<sup>4</sup> Accordingly, the decision of

<sup>2</sup> Rule 10 of the Rules of the Circuit Court of Appeals for the Fifth Circuit provides in part: "Federal Rules of Civil Procedure, adopted by the Supreme Court pursuant to Act of June 19, 1934, Nos. 46, 50, 51, 73, 74, 75, and 76, are adopted as rules of this court in cases to which they apply."

<sup>3</sup> Rule 12 provides in part: "Appeals in admiralty are otherwise governed by the general rules of this court."

<sup>4</sup> The fact that the vessel is apparently lying within the territorial jurisdiction of both courts (Pet. 4) is immaterial. As was said in *The Brig Ann*, 9 Cranch at p. 291, "although

the court below dismissing the appeal *in rem* is correct, and it accords with the prior decisions of that court in *Canal Steel Works, Inc. v. One Drag Line Dredge*, 48 F. (2d) 212, certiorari denied, 284 U. S. 647, and *The Kotkas*, 135 F. (2d) 917; and with the decision of the Circuit Court of Appeals for the Third Circuit in *The Denny*, 127 F. (2d) 404.

Petitioner (Pet. 12, 18-22) asserts conflict with *The Rio Grande*, 23 Wall. 458; *The Kaiser Wilhelm II*, 246 Fed. 786 (C. C. A. 3); and *The Villarperosa*, 43 F. Supp. 140 (E. D. N. Y.). In *The Rio Grande*, the release and removal of the vessel was unlawful since the appeal, allowed prior to its release, operated as a supersedeas;<sup>5</sup> the holding of the case was merely that "an accidental or fraudulent or improper removal" of the vessel from the custody of the Marshal did not oust the jurisdiction (23 Wall. at 465). *The Kaiser Wilhelm II* was an earlier decision by the same court which decided *The Denny*, *supra*; the present question was not discussed in the opinion and the report does not indicate whether or not the vessel had been released. In *The Villarperosa*, the vessel was not released unconditionally but remained in the constructive custody of the court.

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judicial jurisdiction once attached, it is divested by the subsequent proceedings; and it can be revived only by a new seizure."

<sup>5</sup> See Sec. 23 of the Judiciary Act of 1789, 1 Stat. 85, made applicable to appeals in admiralty by the Act of March 3, 1803, 2 Stat. 244.

2. The libel sought relief *in personam* only against Todd-Galveston. None was sought against the United States, and none could have been, for a claim for damages for detention of a vessel under claim of right is one sounding in tort upon which the United States has consented to be sued. Cf. *Tempel v. United States*, 248 U. S. 121. But, as the court below rightly held in affirming the judgment as to Todd-Galveston,<sup>6</sup> that company was a bailee for a special purpose, whose custody of the vessel did not oust the possession of the United States.<sup>7</sup> Hence the detention complained of is a detention by the United States for which it has

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<sup>6</sup> The petition is somewhat misleading as to the disposition which the circuit court of appeals made of the district court's order dismissing the case as to Todd-Galveston. As a question presented (Pet. 8-9) and as a reason for granting the writ (Pet. 12), petitioner urges that the court below held that it lost jurisdiction of the *in personam* action because it had no jurisdiction of the *res*. The argument is subsequently developed and a conflict with *The Denny*, 127 F. (2d) 404 (C. C. A. 3) asserted (Pet. 23-24). The court below, however, did not hold that there was no jurisdiction of the action against Todd-Galveston, but expressly affirmed the District Court's dismissal of that *in personam* action because the ship was in the possession of the United States and only in the custody of Todd-Galveston for temporary and limited purposes (R. 136-137). Consequently, there is no conflict with *The Denny* in any jurisdictional aspect or otherwise.

<sup>7</sup> Petitioner suggests (Pet. 27-28) that the facts as to Todd-Galveston's possession were not before the court. But they were pleaded in Todd-Galveston's verified answer (which was filed before the entry of a final decree dismissing the case as to Todd-Galveston) and are nowhere denied in the pleadings or the petition here.

not consented to be sued and for which Todd-Galveston is not liable. The case is not in conflict with *The Denny, supra*, for there the action was allowed to proceed *in personam* against a private corporation having actual possession of the vessel and no question was involved as to the liability of a bailee for a special and limited purpose.

3. The decision of the district court dismissing the libel was correct for other reasons. Petitioner suggests that in granting the petition of the United States to dismiss the libel the district court denied petitioner opportunity to litigate the question of title to the *Manuel Arnus* (Pet. 25-31). However, the parties agreed to submit that question upon pleadings and affidavits (R. 59; Pet. 4), and the district court's decision assumed as true all facts set forth by petitioner (R. 120). It is undisputed that the United States acquired at least whatever title the Mexican Government had, and the district court properly held that it could not examine into the validity of the title claimed by the Republic of Mexico.<sup>8</sup> In so holding, it relied on the well-settled principle that "the courts of one country will not sit in judgment on the acts

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<sup>8</sup> Consequently, there is no need to consider the district court's alternative holding (R. 120) that possession by the United States under claim of title ousted the court's jurisdiction, although we submit that this holding is correct and, contrary to petitioner's assertion (Pet. 28-29), not in conflict with *The Davis*, 10 Wall, 15, 21, or *United States v. Lee*, 106 U. S. 196.

of the government of another done within its territory." *Underhill v. Hernandez*, 168 U. S. 250, 252; see also *Ricaud v. American Metal Co.*, 246 U. S. 304, 309; *Oetjen v. Central Leather Co.* 246 U. S. 297, 303; *United States v. Belmont*, 301 U. S. 324, 327; *United States v. Pink*, 315 U. S. 203, 233.

Petitioner seeks to escape the application of that principle by asserting that the *Manuel Arnus* was brought into Mexico by force and was therefore not subject to its laws (Pet. 32-39). The assertion is immaterial,<sup>9</sup> for whether or not the Mexican Government, in applying the Mexican law of abandonment to the *Manuel Arnus*, complied with the requirements of international law is, like any other question going to the validity of the action of a foreign government, a diplomatic, not a judicial matter. A similar contention was rejected by this Court, in *Oetjen v. Central Leather Co.*, *supra*, where it was contended that the seizure was in violation of the "Regulations Respecting Laws and Customs of War on Land" annexed to the Hague Convention of 1907. The cases relied upon by petitioner (Pet. 33-35) relate to the question whether a foreign vessel shall be held subject to the laws of the jurisdiction

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<sup>9</sup> Moreover, the vessel was not brought to Mexico by force; it was brought there voluntarily by those who had acquired control of it in Cuba with the approval of the accredited representative of the Spanish Government there (see Statement, *supra*, p. 4).

in which the court is sitting, and are irrelevant to the present question of the respect which a court of one jurisdiction must pay to governmental acts of another.

#### CONCLUSION

The decision below is correct and presents no question of general importance. There is no conflict of authorities. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FAHY,  
*Solicitor General.*

FRANCIS M. SHEA,  
*Assistant Attorney General.*

DAVID L. KREEGER,  
*Special Assistant to the Attorney General.*

PAUL A. SWEENEY,  
WALTER J. CUMMINGS, Jr.,  
*Attorneys.*

AUGUST 1944.







## APPENDIX

In the District Court of the United States for the  
Southern District of Texas, Galveston Division

Admiralty No. 1785

COMPANIA TRASATLANTICA, ADMINISTRADA POR EL  
ESTADO, LIBELANT

vs.

THE SPANISH STEAMER, "MANUEL ARNUS," HER  
ENGINES, ETC., AND TODD-GALVESTON DRY DOCKS,  
INC., RESPONDENTS

*The President of the United States of America,  
to the Marshal of the Southern District of  
Texas, Greeting:*

Whereas, the Honorable Thomas M. Kennerly,  
United States District Judge for the Southern  
District of Texas, has made an order in writing  
in the above entitled and numbered cause as  
follows:

*Final decree.*—This cause having duly  
come on to be heard on the 10th day of April,  
1943, on the petition of the United States  
of America, appearing specially and having  
been argued and submitted by the proctors  
for the respective parties, and the Court,  
after due deliberation, having rendered its  
opinion in writing, directing a decree dis-  
missing the libel herein,

Now, on motion of Douglas W. McGregor,

proctor for the United States of America, appearing specially, it is ordered that the opinion of this Court heretofore filed herein on the 15th day of April, 1943, be and it hereby is adopted as the Court's findings of fact and conclusions of law pursuant to Supreme Court Rule 46½, and it is ordered, adjudged, and decreed, that the libel herein be and the same hereby is dismissed for want of jurisdiction, and it is further

Ordered, adjudged, and decreed that all process heretofore issued herein, including the arrest of the steamship *Manuel Arnus* be vacated, and it is further

Ordered that the Marshal of this Court forthwith release the said vessel from his custody and deliver the same to the United States of America, and it is further ordered, adjudged, and decreed that all costs of court and of seizure incurred herein are here and now taxed against libellant.

T. M. KENNERLY,

*United States District Judge.*

Done at Houston, Texas, this 26th day of April, A. D. 1943.

Wherefore, you are hereby commanded to release the Steamship *Manuel Arnus*, from your custody and deliver same to the United States of America.

Wherein fail not! and due return of this writ make, showing how you have executed the same.

Witness the Honorable Thomas M. Kennerly, Judge of said Court and the seal thereof, at the City of Galveston, Texas, this 28th day of April, A. D. 1943.

HAL V. WATTS, *Clerk.*

[SEAL] By (S.) K. S. EVANS, *Deputy.*  
(Mrs. K. S. EVANS.)

Ad. No. 1785. Received 4/28/1943. Marshal's Docket No. 12288, 27/520. Compania Trasatlantica Administrada Por El Estado vs. The Spanish Steamer *Manuel Arnus*, her engines, et al. Writ of release. Issued, April 28, 1943. Hal V. Watts, Clerk; By K. S. Evans, Deputy. Returned and filed Apr. 30, 1943, Hal V. Watts, Clerk; By K. S. Evans, Deputy.

#### MARSHAL'S RETURN

Received this Writ of Release at Galveston, Texas, on April 28th, 1943, and on April 28th, 1943, at plant of Todd Galveston Dry Docks, Inc., I executed this writ of release by removing notices from forward and aft of S/S *Manuel Arnus*, and notifying Mr. R. J. Van Derwende, President of Todd Galveston Dry Docks, Inc. Further in compliance with orders of this Writ of Release I delivered said ship to the United States of America by notifying Mr. R. B. Wilkens, Jr., in the office of War Shipping Administration, Galveston, Texas.

M. F. HAMMOND,  
*United States Marshal.*

By (S.) IRA H. DEVINE,  
Ira H. Devine,  
*Deputy.*

#### CERTIFIED COPY

UNITED STATES OF AMERICA,  
*Southern District of Texas, ss:*

I, Hal V. Watts, Clerk of the United States District Court in and for the Southern District of Texas, do hereby certify that the annexed and foregoing is a true and full copy of the original Writ of Release issued

and dated April 28, 1943, in Cause No. 1785 on the Admiralty Docket of the Galveston Division of this Court, entitled *Compania Trasatlantica, Administrada Por El Estado, Libelant, vs. The Spanish Steamer, Manuel Arnus* her engines, etc. and Todd Galveston Dry Docks, Inc., Respondents, returned and filed April 30, 1943, with Marshal's Return thereon now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Houston, Texas, this 1st day of February, A. D. 1944.

[SEAL]

HAL V. WATTS,  
By Hal V. Watts,

*Clerk.*

[No. 1785 AD. United States District Court, Southern District of Texas. *Compania Trasatlantica, Administrada Por El Estado, Libelant, vs. The Spanish Steamer, Manuel Arnus* her engines, etc., and Todd Galveston Dry Docks, Inc., respondents. Certified copy of Writ of Release.]

